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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL
For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) **\$2,090.00****Complete if Known**

Application Number	10/083,842
Filing Date	02/27/02
First Named Inventor	Jonas Grinas
Examiner Name	Rao, Deepak R.
Art Unit	1638
Attorney Docket No.	50097USNP

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 50-1744 Deposit Account Name: Syngenta

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims		
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims		
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	_____ / 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief (\$500.00) (4 month extension \$1,590.00) **Fees Paid (\$)** 2,090.00**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 36,063	Telephone 919-541-8587
Name (Print/Type)	Michael E. Yates	Date June 9, 2005	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Jonas Grina *et al.*
Application Serial No. 10/083,842

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Jonas Grina

Appl. No. 10/083,842

Filed: February 27, 2002

For: Novel Cyanoenamines Useful As Ligands For Modulating

Gene Expression In Plants or Animals

Art Unit: 1638

Attorney Docket: 50097USNP

Examiner: Rao, Deepak R.

Confirmation No: 2780

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

APPELLANT'S BRIEF UNDER 37 CFR §41.37

Sir:

Responsive to the Advisory Action of June 6, 2005 Applicant respectfully presents this appeal brief.

An extension of time of 4 months from December 9, 2004 is respectfully petitioned, and the fee for filing this brief is also paid. Please charge any required fees, or credit any overpayment to the Syngenta Biotechnology, Inc. Deposit Account No. 50-1744.

06/14/2005 RMEBRAHT 00000012 501744 10083842

01 FC:1254 1590.00 DA
02 FC:1402 500.00 DA

REAL PARTY IN INTEREST

Syngenta Participations AG is the real party in interest in the present matter.

RELATED APPEALS AND INTERFERENCES

None

STATUS OF THE CLAIMS

Claim 1-28 are pending. Claims 15-28 were withdrawn from consideration. Claims 1, 2, 5-8 and 11-13 were allowed, and Claims 3, 4, 9, 10 and 14 are rejected under the Final Office action dated June 17, 2004.

STATUS OF THE AMENDMENTS

No amendments were entered in view of the Amendment After Final filed on September 17, 2004

CLAIMED SUBJECT MATTER

The present invention relates generally to novel compounds that are useful as ligands for modulating gene expression in living organisms, including plants and animals. More particularly, the present invention relates to compounds that are cyanoenamines that are useful as non-steroidal ligands for modulating exogenous gene expression in eukaryotic organisms, and particularly chlorophyll-containing plants.

ISSUES

Whether the amendments presented in the Reply filed September 17, 2004 address the 35 U.S.C. § 112, second paragraph rejections that “the substituents on R2 and R3 are joined to form cyclic structures on adjacent atoms of said aromatic ring” and whether the amendments address a lack of antecedent basis for the recitation in Claim 9 of “said tautomeric compound is lactone.”

GROUPING OF CLAIMS

All claims stand or fall together.

ARGUMENT

Applicant has taken the position that the specification is clear, at page 13, that the substituents R2 and R3 can be (“may also be”) joined to form cyclic structures on adjacent carbon atoms of the aromatic ring. The Examiner states that “may also be” means “in addition to the substituents provided for R2 and R3, but this is not correct. What is taught is clearly that appropriate R2 and R3 substituents can be joined to form cyclic structures, including but not limited to 1,2 – methylenedioxy and 1,2-difluoron methylenedioxy as in Claim 4, and also for example the species in Claim 14, as depicted by the Examiner at page 3 of the Advisory Action of June 6, 2005. The Examiner appears to look to Applicant to provide additional disclosure for compounds with which R2 and R3 can form cyclic substituents, but Applicant respectfully submits that this is in contradiction to the teaching of the specification. The proposed amendments to the claim (Claim 3) clearly address this, and no antecedent basis issues need to be addressed.

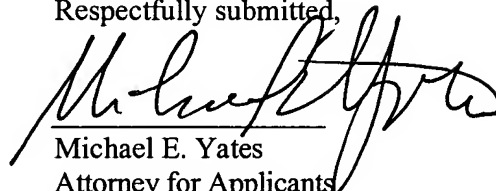
The same principle applies with regard to the Examiner’s argument in connection with the recitation of “said tautomeric compound is lactone” in Claim 9. Claim 1 recites, at the last line of the claim, “or tautomers thereof.” Claim 8 depends from Claim 1, and Claim 9 from Claim 8. Claim 8 therefore recites, through its dependency from Claim 1, tautomeric structures, and Claim 9 further limits that recitation by reciting a lactone. In fact, Applicant submits that the Examiner’s reference to page 13 of the specification, where formation of a lactone is disclosed, seems to support rather than refute the antecedent basis in Claims 1 and 8 for the recitation in Claim 9.

CONCLUSION

Applicant respectfully submits that the amendments presented in the Reply Under 37 CFR §1.116 on September 17, 2004 addressed the Examiner's grounds for rejection that were maintained, and should have been entered. Applicant respectfully requests that the Examiner be directed to enter these amendments and to allow the remaining claims.

Syngenta Biotechnology, Inc.
3054 Cornwallis Road
Research Triangle Park, NC 27709-2257
Telephone: 919-541-8587
June 9, 2005

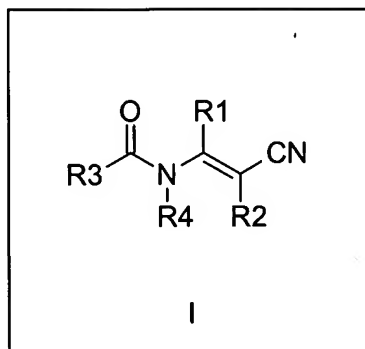
Respectfully submitted,


Michael E. Yates
Attorney for Applicants
Registration No. 36,063

Appenedix of Claims:

What is claimed is:

1. (Previously amended) A compound of Formula I



wherein:

R1

is a branched chain C3 to C8 alkyl, C3 to C8 cycloalkyl, C4 to C8 alkyl-substituted alkyl, bicycloalkyl, 1-adamantyl, polyhaloalkyl, trialkylsilyl, or substituted phenyl;

R2 and R3

are each independently of the other unsubstituted or substituted aromatic rings, chosen from phenyl, pyridyl, pyrimidinyl, furyl, thiophenyl, pyrazinyl, pyrrolyl, pyrazolyl, 1,2,4-triazolyl, naphthyl, fluorenonyl, xanthenyl, 4-oxo-1,4-dihydro-(1,8)naphthyridinyl, thiazolyl, isothiazolyl, 1,3,4-thiadiazolyl,

benzo-1,2,3-thiadiazolyl, oxazolyl, imidazolyl, quinolinyl, or isoquinolinyl, where a substituent on the rings is one or more chosen independently from hydrogen, C1 to C4 alkyl, alkoxy, alkoxyalkyl, hydroxy, amino, alkylamino, dialkylamino, acylamino, halo, haloalkyl, hydroxyalkyl, dihydroxyalkyl, alkoxycarbonyl, alkylaminocarbonyl, dialkylaminocarbonyl, unsubstituted or substituted alkylphenyl, unsubstituted or substituted phenyl, unsubstituted or substituted phenoxy, nitro, cyano, alkylthio, alkylsulfonyl, aminoalkyl, carboxyalkyl, or sulfonylalkyl;

and

R4

is hydrogen, alkylthio, alkylthioalkyl, alkyloxyalkyl, acyloxyalkyl, alkyl, acyl, trialkylsilyl, and or the salts, stereoisomers, or tautomers thereof.

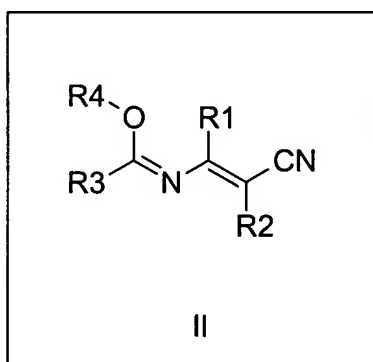
2. (Original) The compound of claim 1, wherein R1 is *tert*-butyl.

3. (Currently amended) The compound of claim 1, wherein ~~at least one of the substituents on R2 and R3 are joined to form cyclic structures on adjacent atoms of said aromatic ring further is substituted with a substituent forming a cyclic structure on adjacent atoms of the aromatic ring.~~

4. (Currently amended) The compound of claim 3, wherein the substituent cyclic structure formed is selected from the group consisting of 1,2-methylenedioxy and 1,2-difluoromethylenedioxy.

5. (Previously amended) The compound of claim 1, wherein R2 is selected from the group consisting of phenyl, 3,5-dimethylphenyl, 2,4-dimethylphenyl, 3-methylphenyl, 4-methylphenyl, and 2-methylphenyl. 6. (Original) The compound of claim 1, wherein R3 is selected from the group consisting of phenyl, 3-pyridyl, 3-methoxy-2-methylphenyl, 3-ethoxy-2-methylphenyl, 3-methoxy-2-ethylphenyl, 4-ethylphenyl, 2,6-difluorophenyl, 2,3-dimethylphenyl, 3-chloro-2-methylphenyl, and 3-bromo-2-methylphenyl.

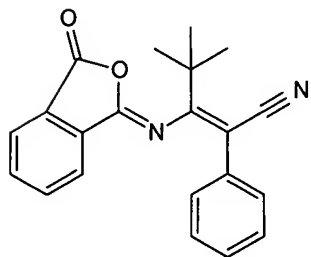
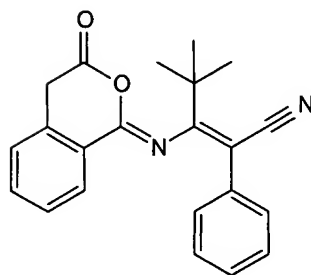
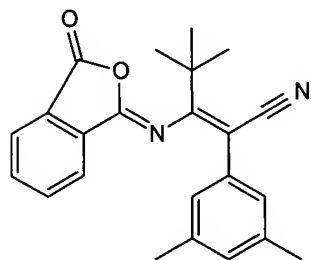
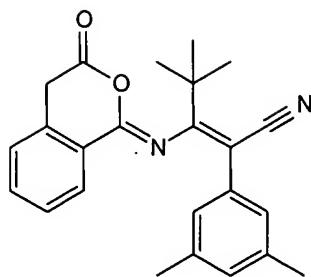
7. (Previously amended) The compound of claim 1, wherein halo is selected from the group consisting of fluoro, chloro, bromo, and iodo. 8. (Original) The

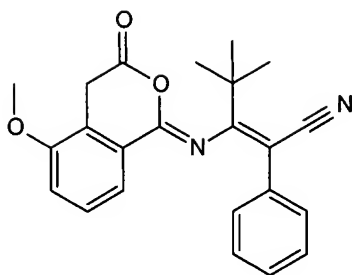


compound of claim I, wherein Formula I is in its tautomeric form as Formula II:

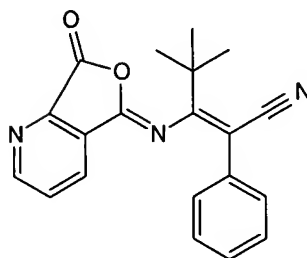
9. (Currently amended) The tautomeric compound of claim 8, wherein said tautomeric compound is R3 and R4 and O together form a cyclic structure resulting in a lactone.

10. (Original) The compound of claim 9, wherein the lactone is selected from the group consisting of:

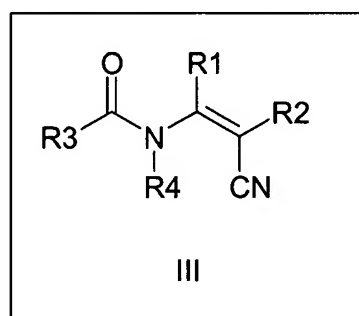




and

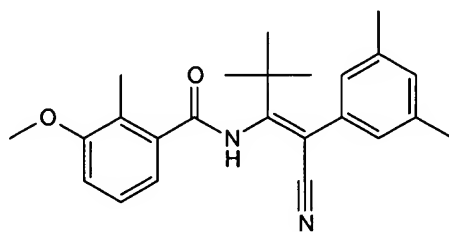


11. (Original) The compound of claim I, wherein Formula I is in its isomeric form as Formula III:

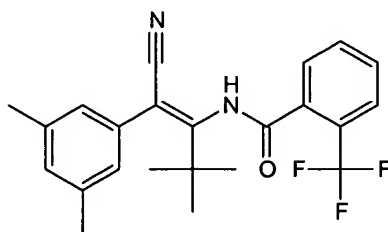


12. (Original) The isomeric compound of claim 11, wherein R1 is *tert*-butyl, R2 is 3,5-dimethylphenyl, and R3 is 2-trifluoromethylphenyl or 2-methyl-3-methoxyphenyl.

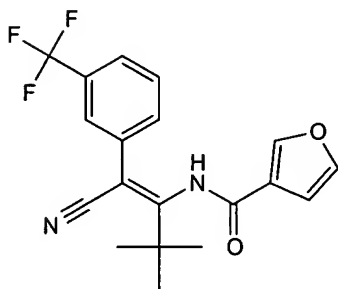
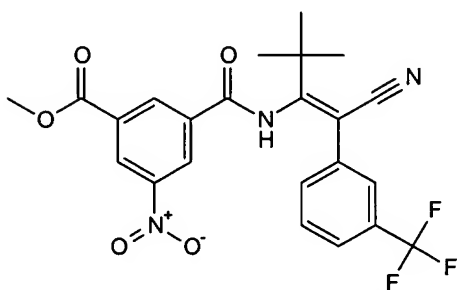
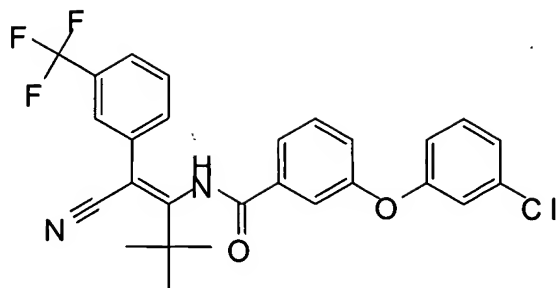
13. (Original) The isomeric compound of claim 12, wherein the compound is selected from the group consisting of:

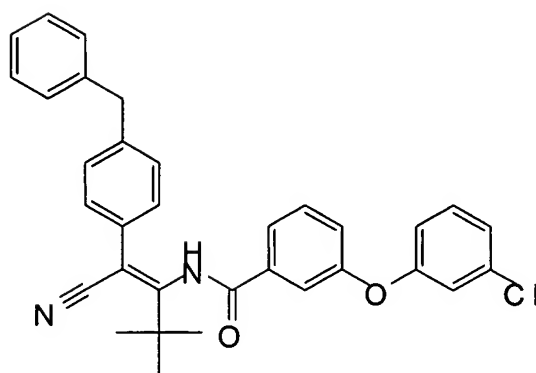
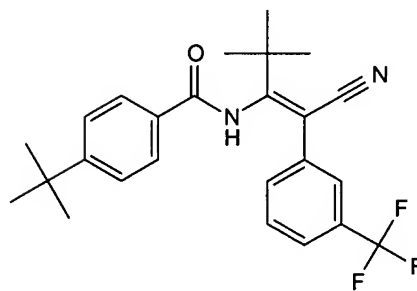
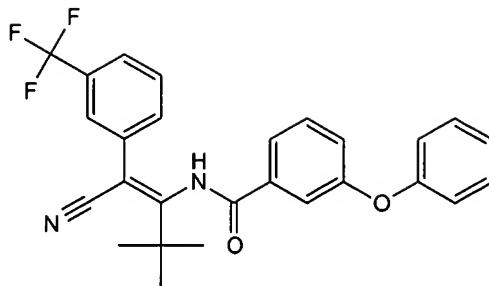


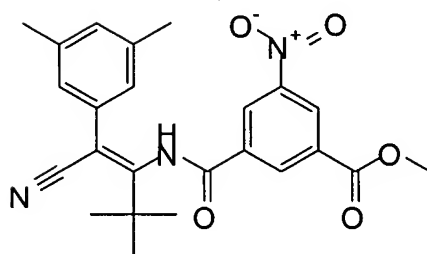
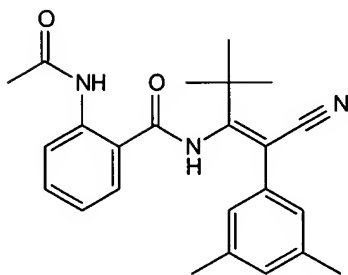
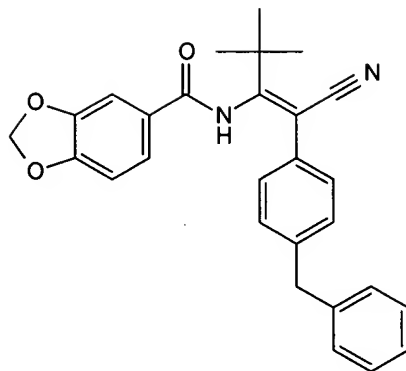
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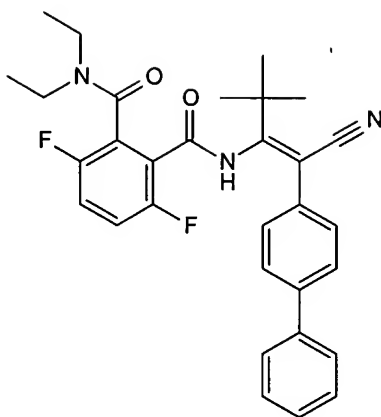


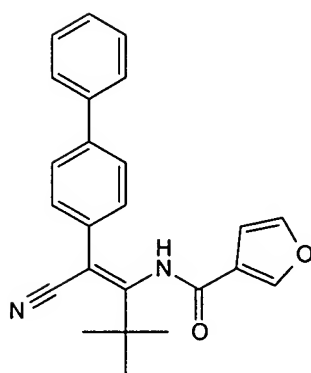
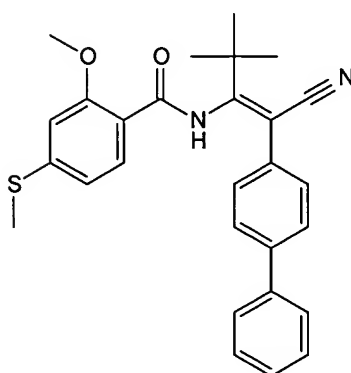
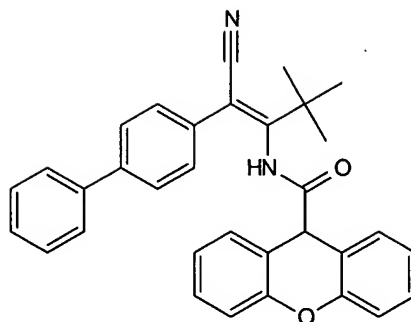
14. (Original) The compound of claim 1, wherein the compound is selected from the group consisting of:

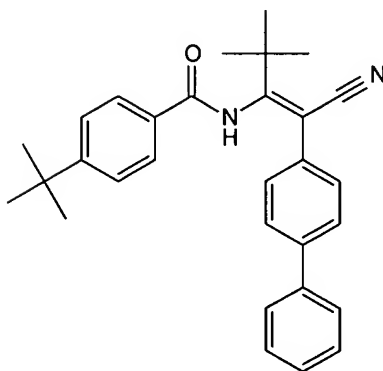
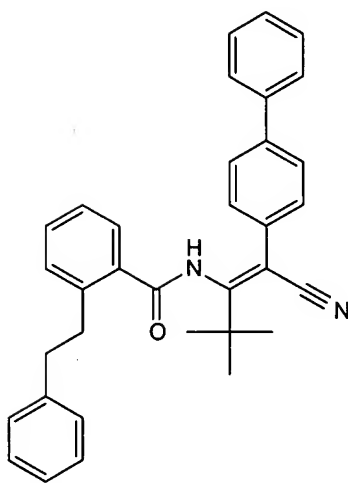
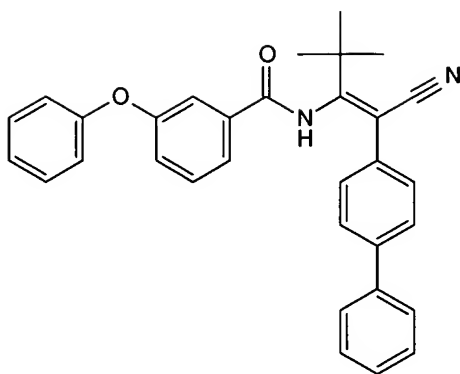


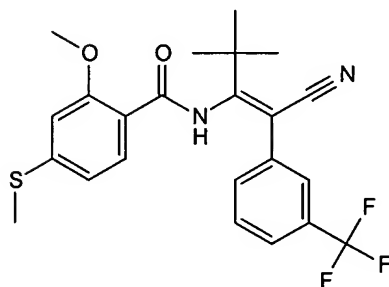
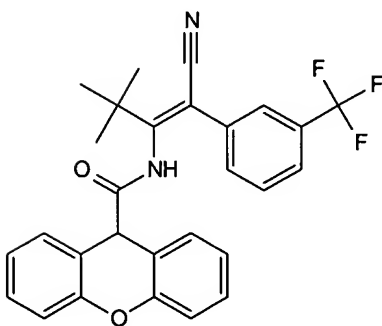
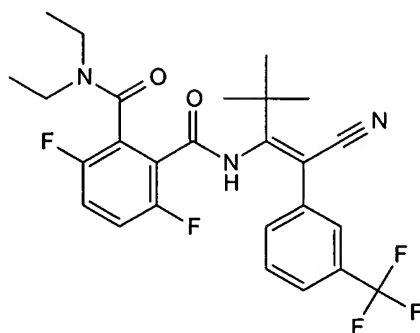


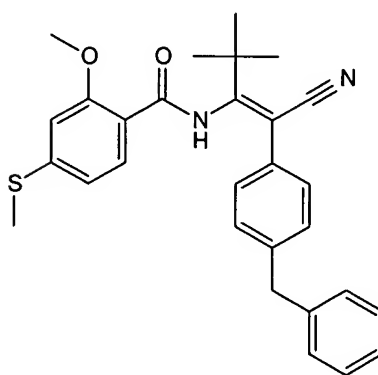
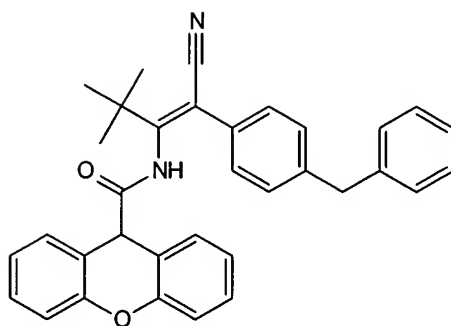
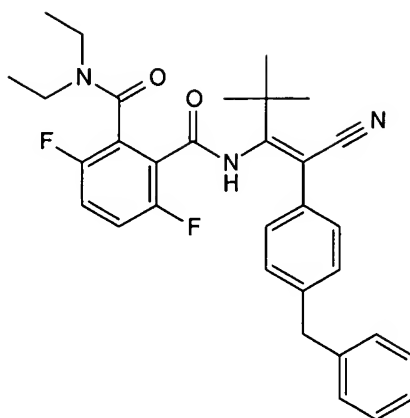


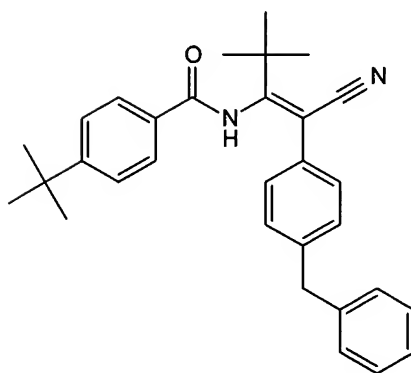
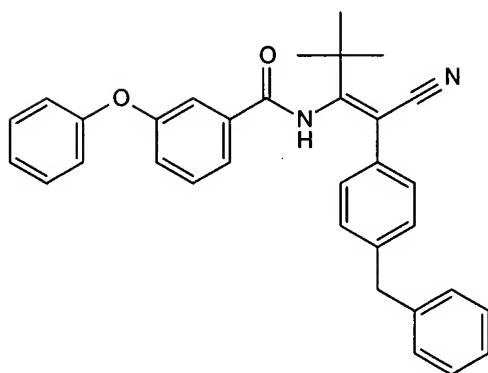
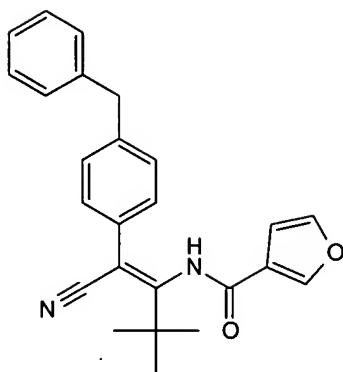


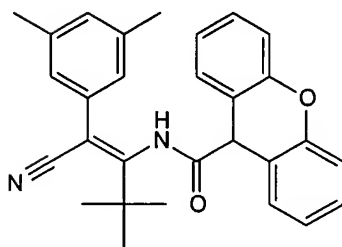
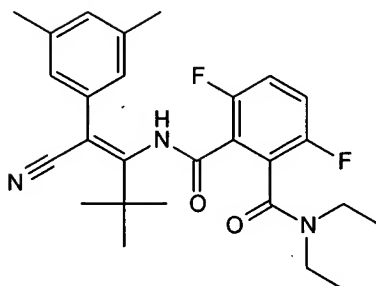
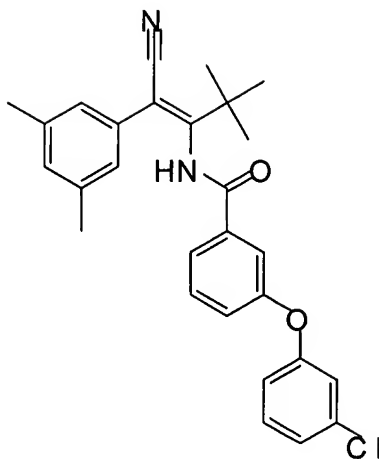


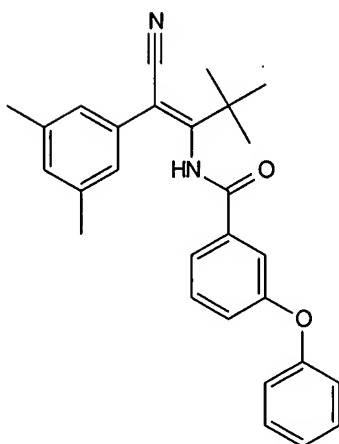
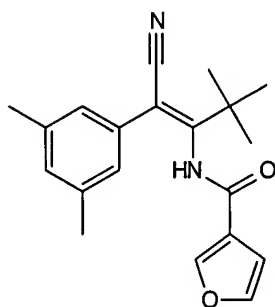
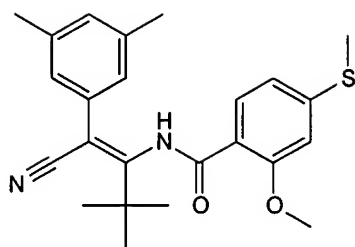


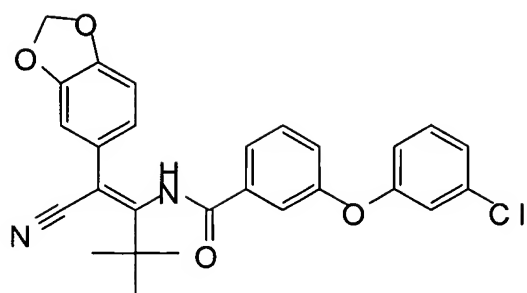
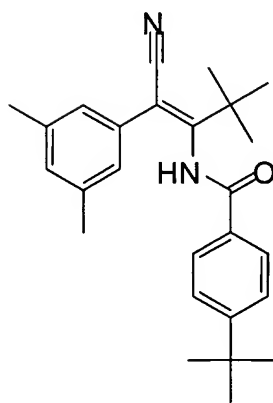
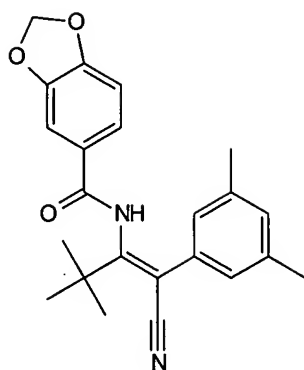


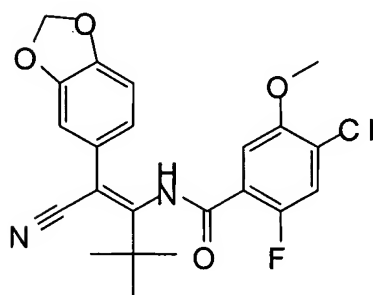
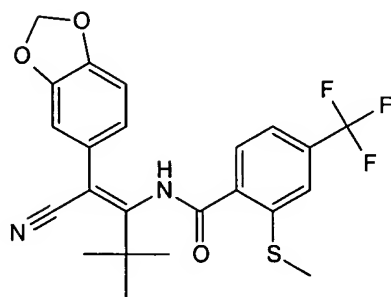
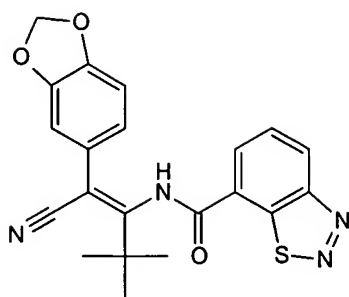


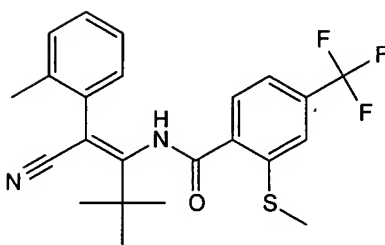
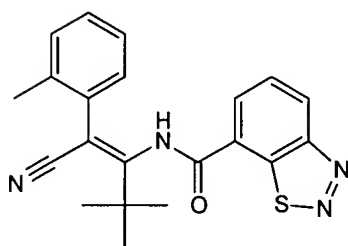
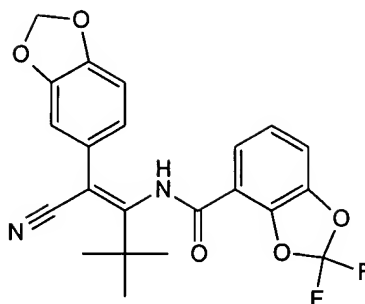


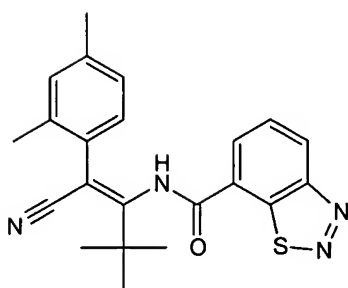
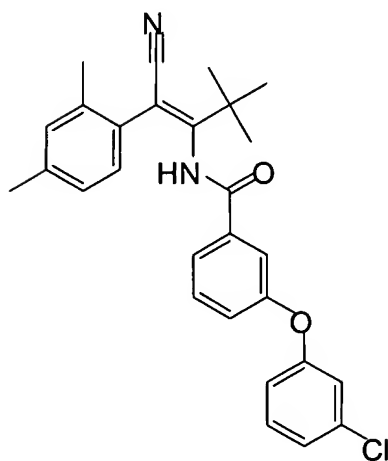
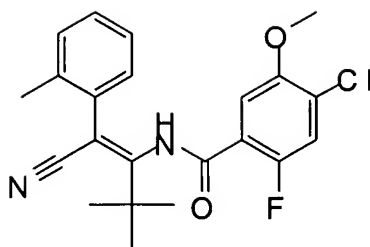


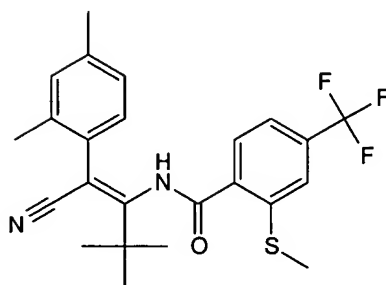
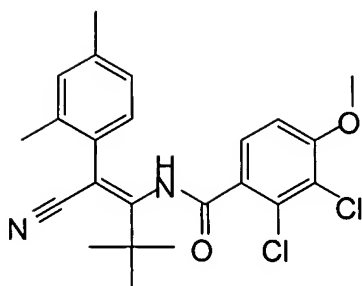
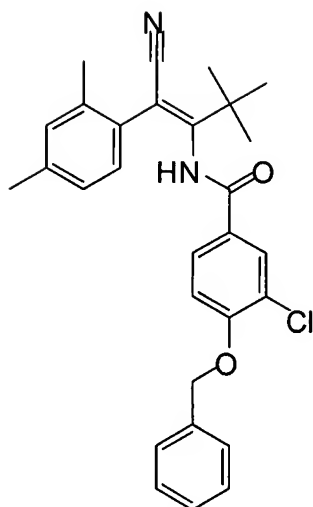


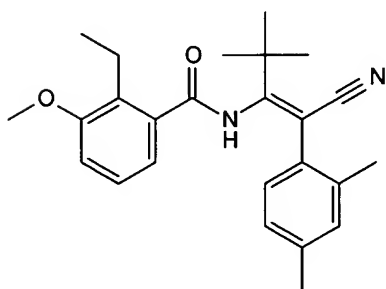
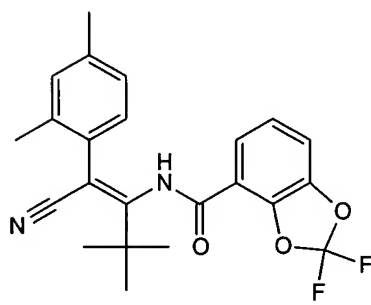
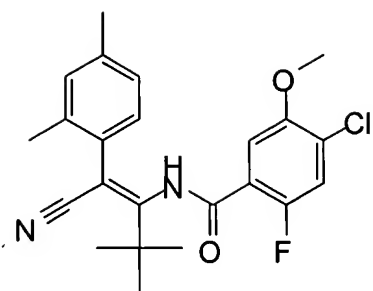


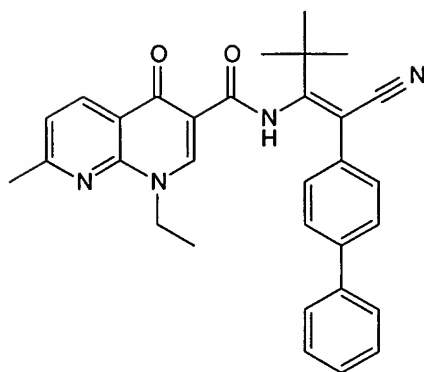
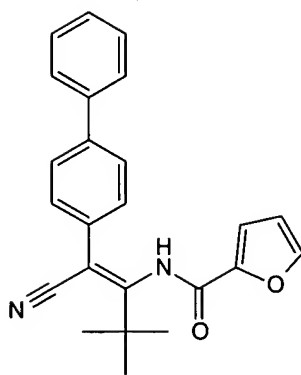
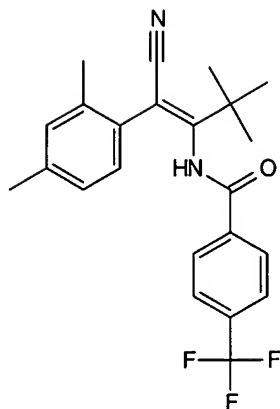


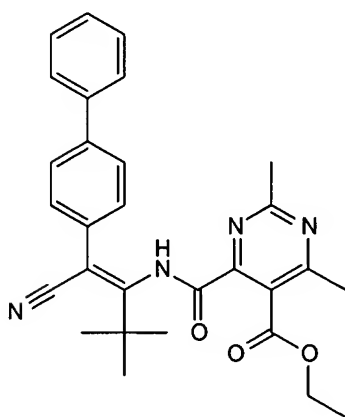
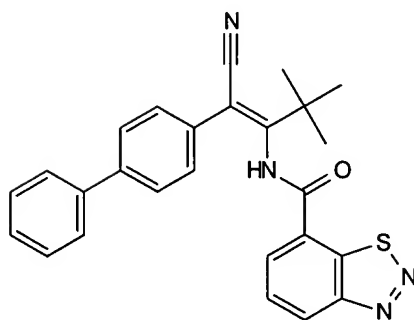
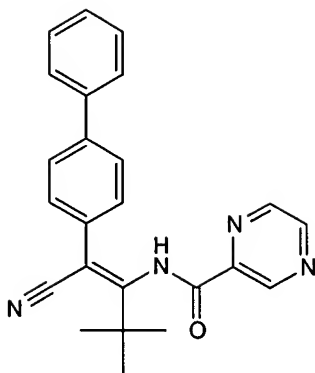


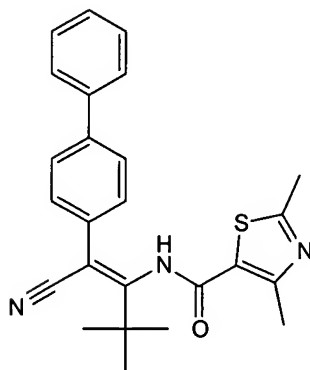
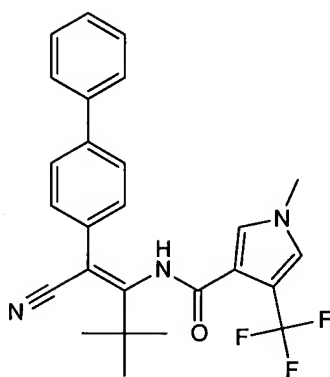
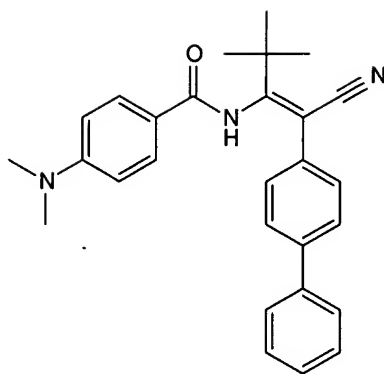


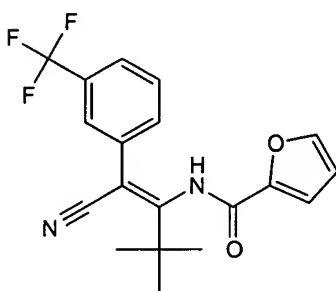
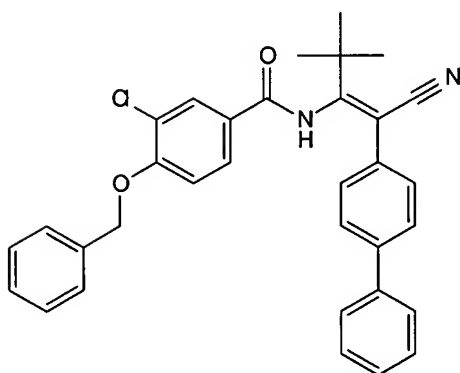
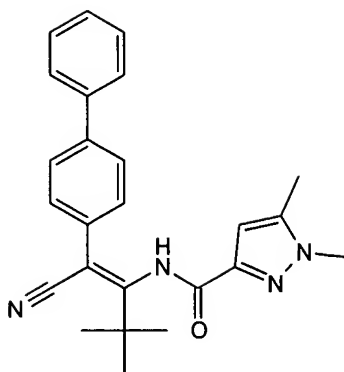


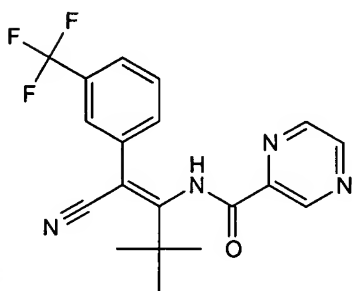
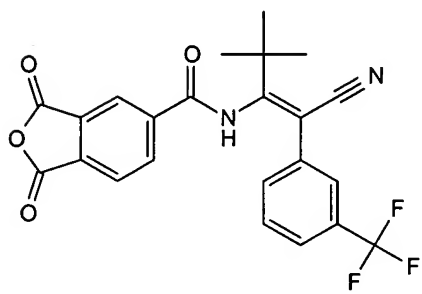
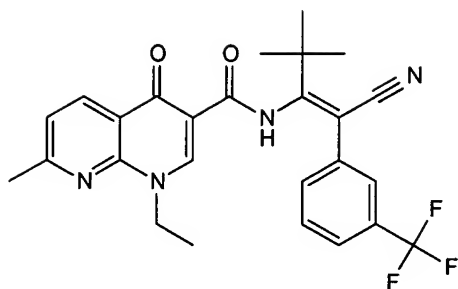


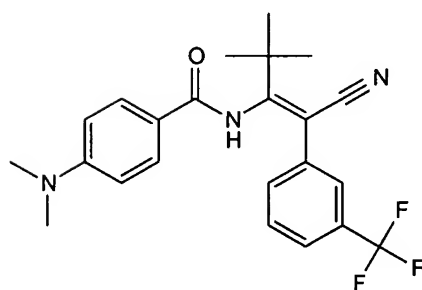
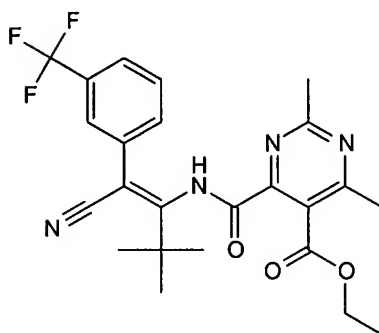
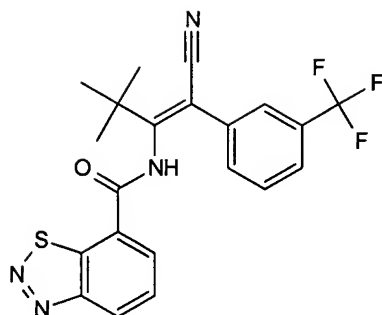


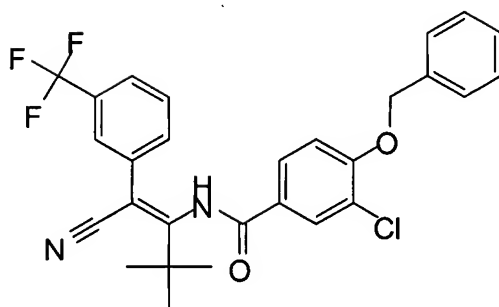
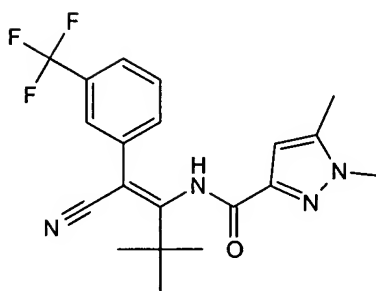
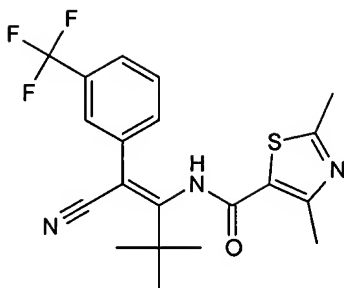


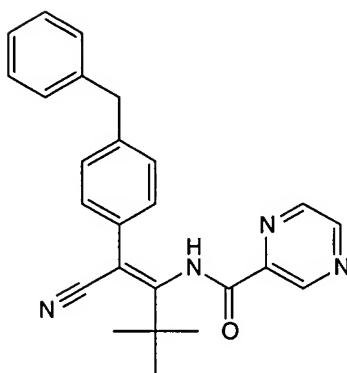
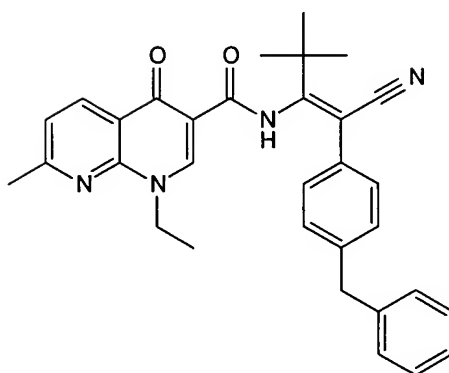
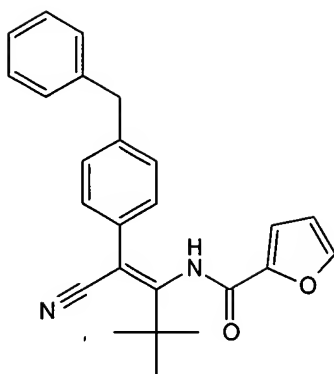


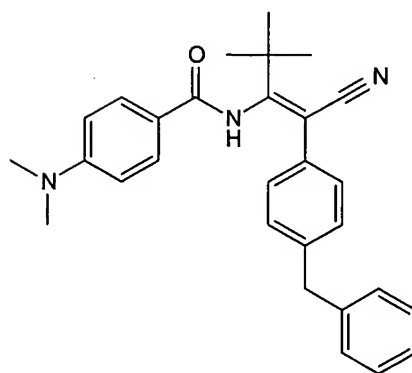
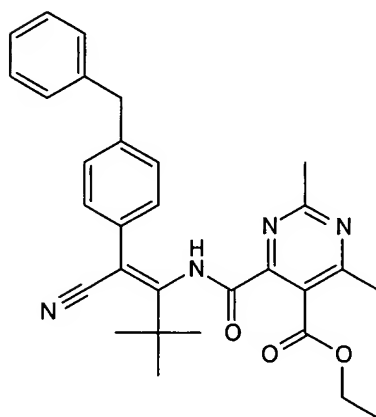
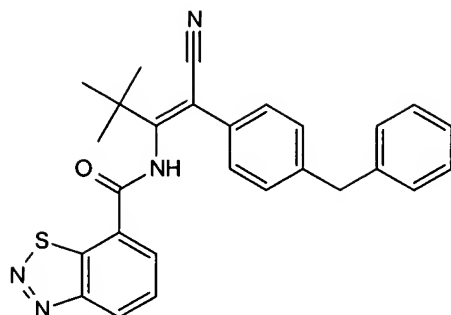


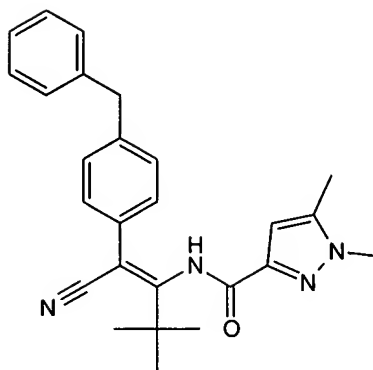
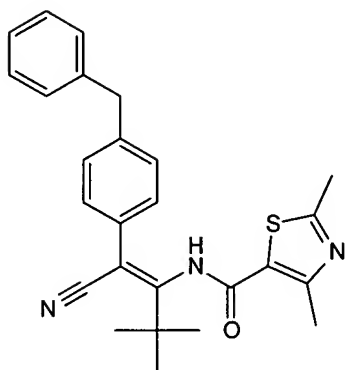
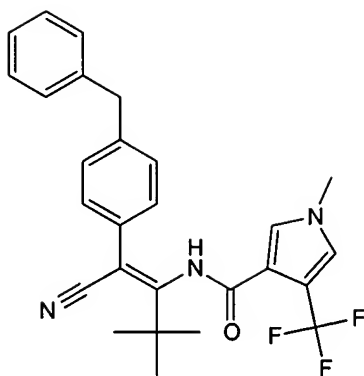


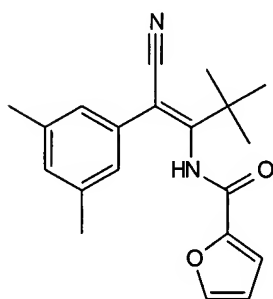
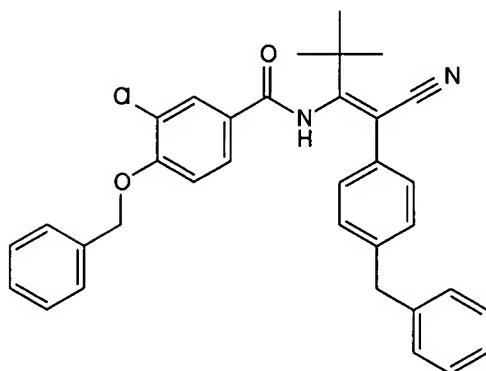
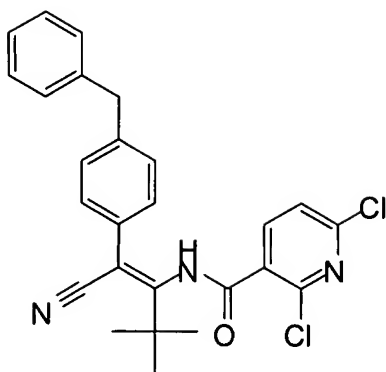


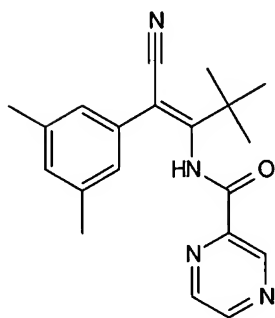
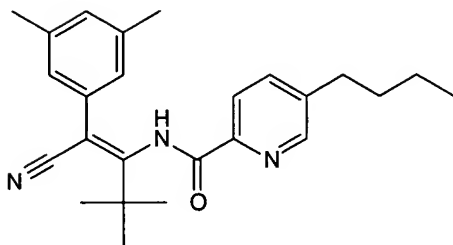
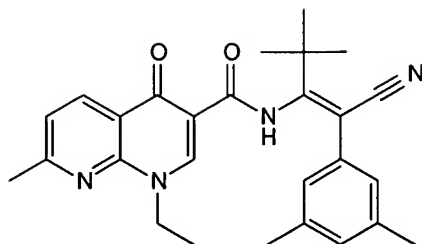


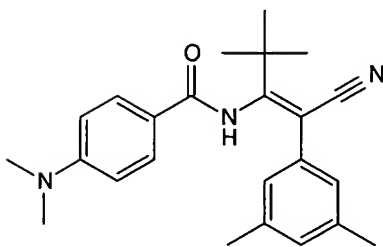
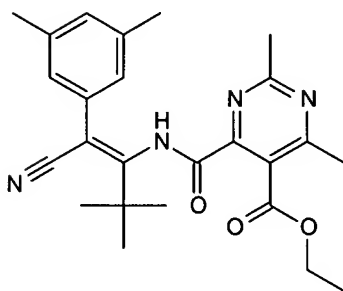
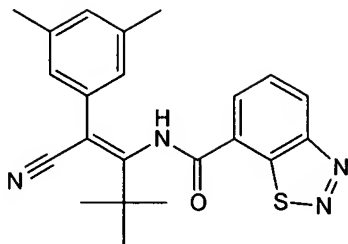


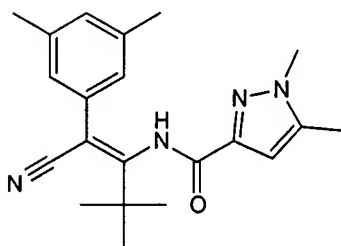
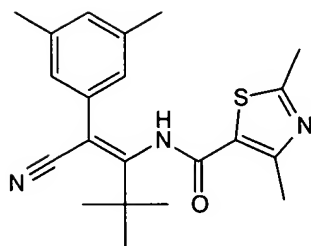
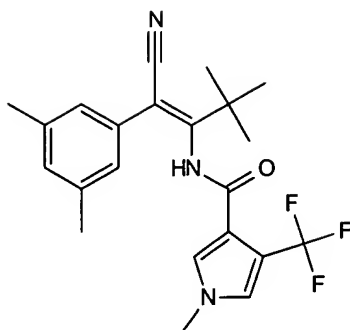


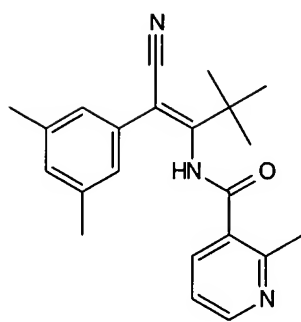
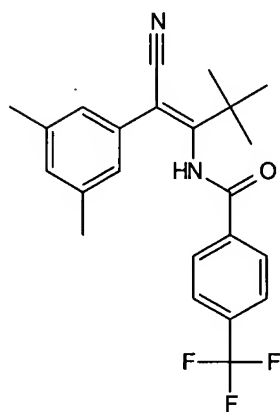
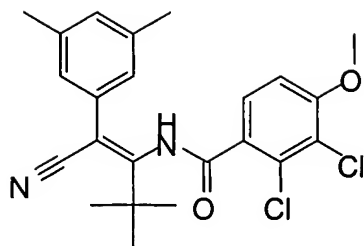


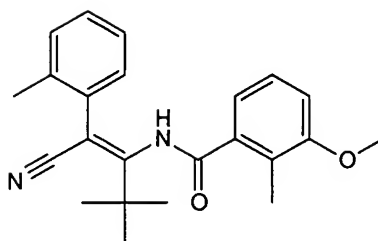
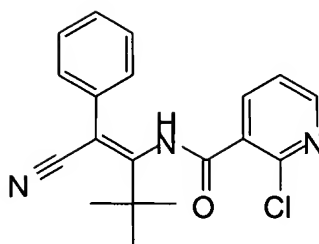
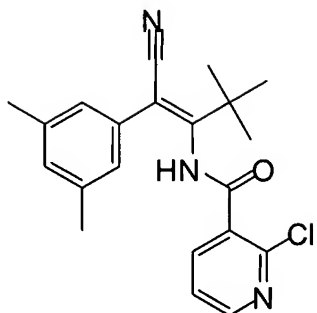


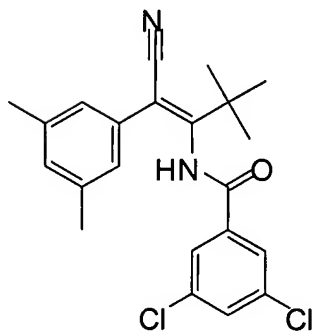
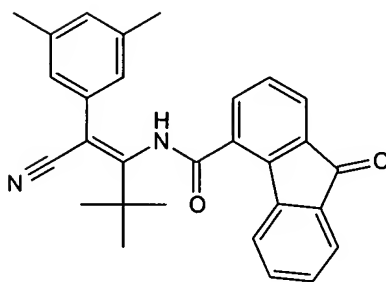
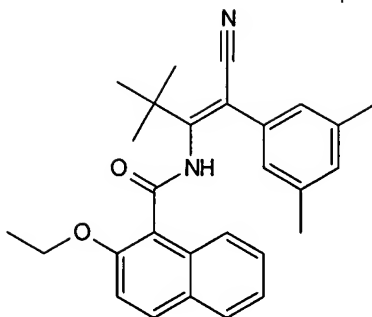


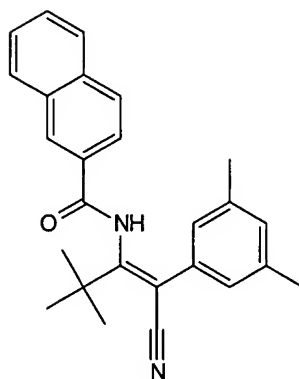
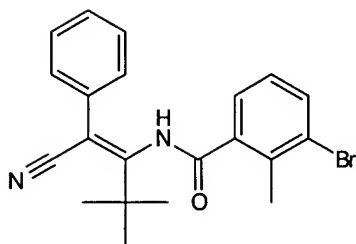
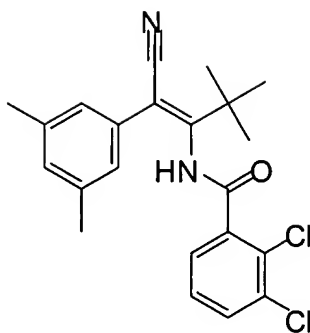


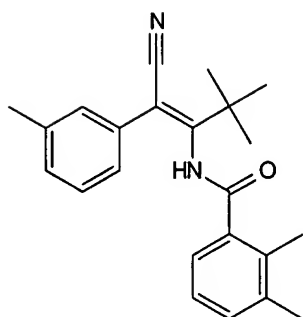
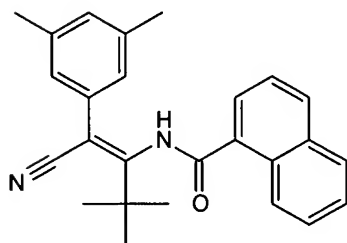
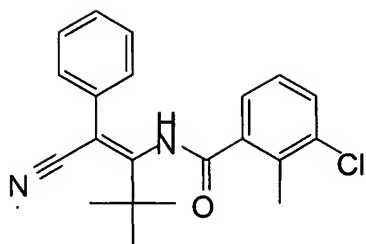


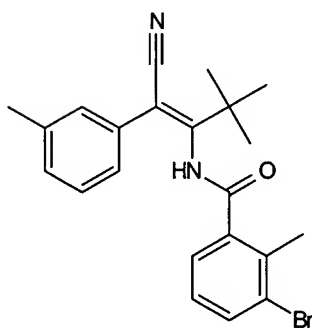
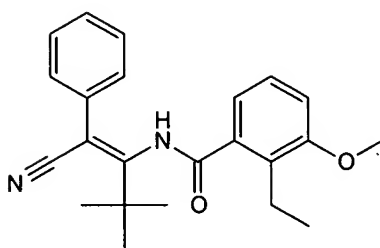
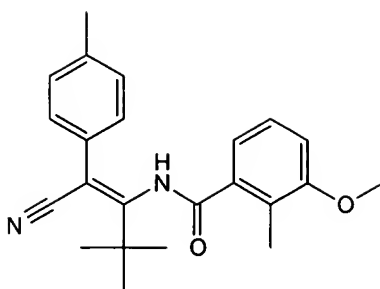


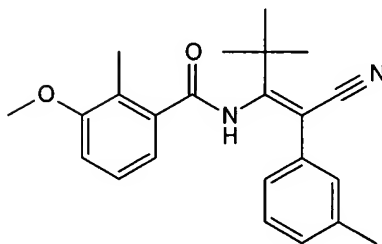
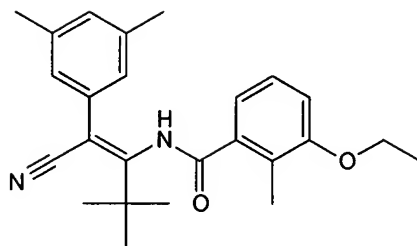
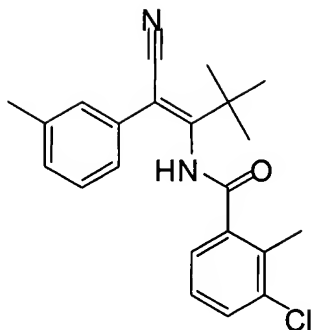


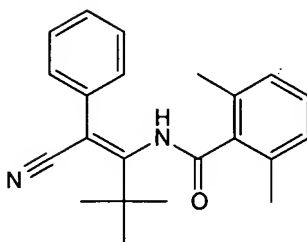
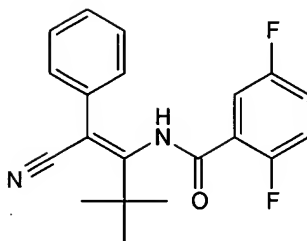
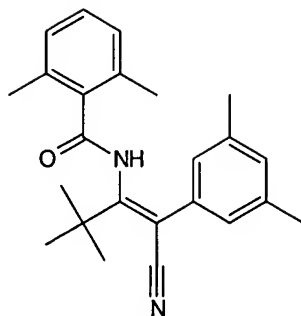


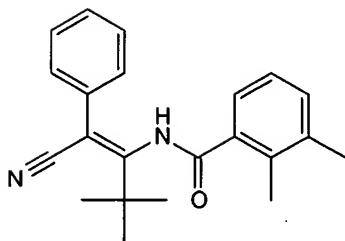
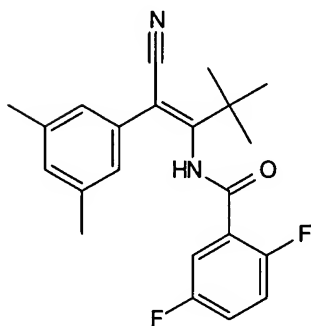
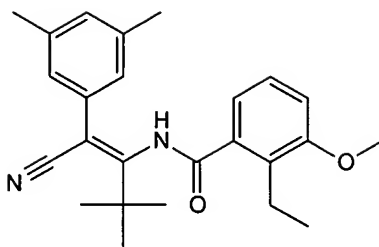


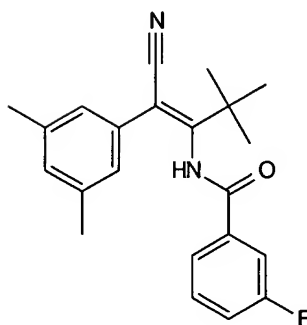
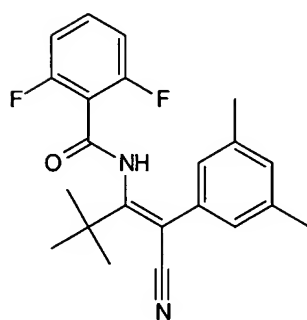
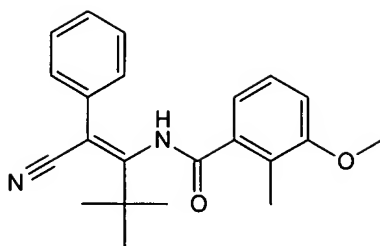


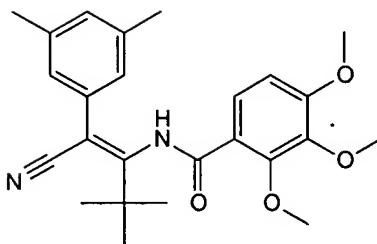
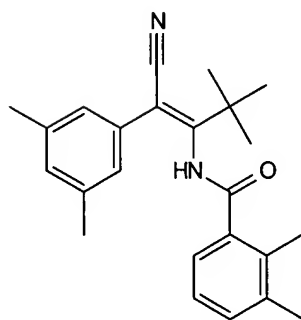
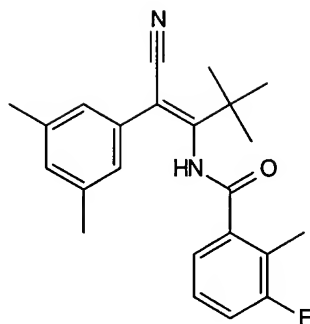


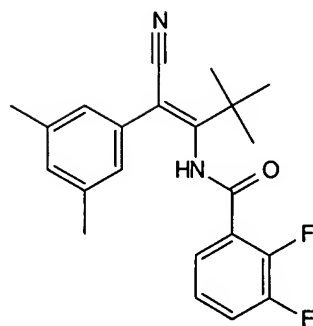
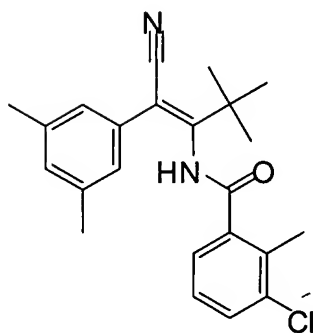
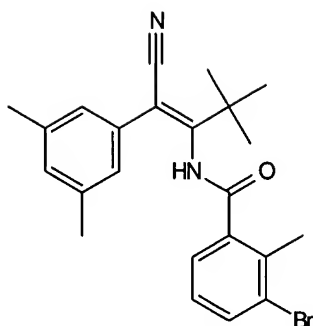


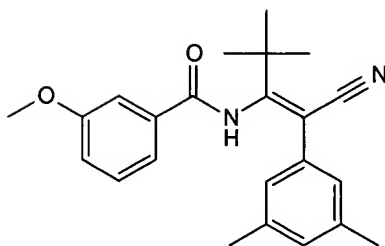
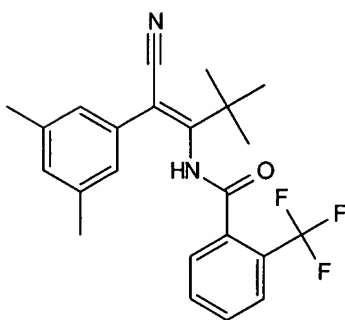
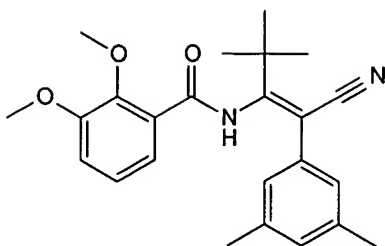


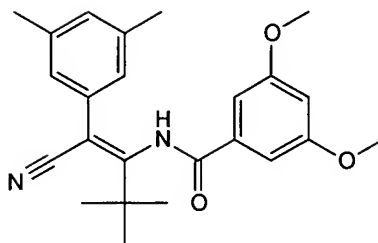
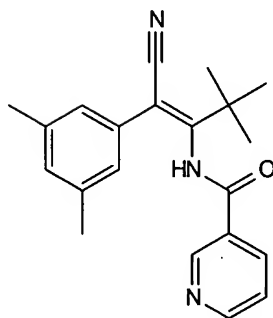
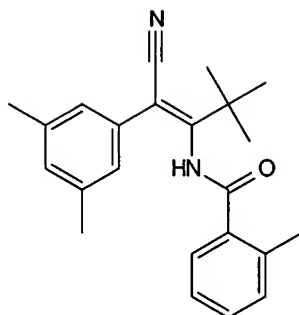


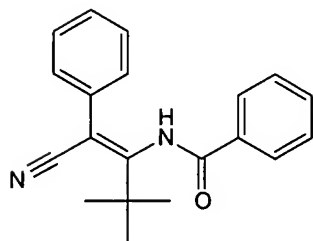
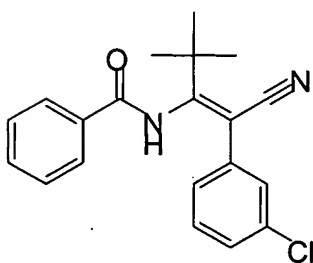
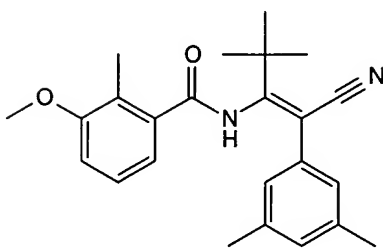
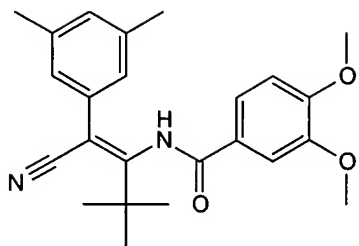


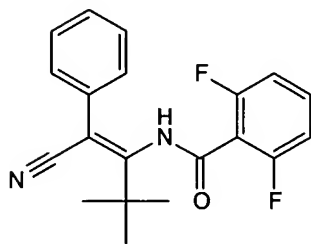
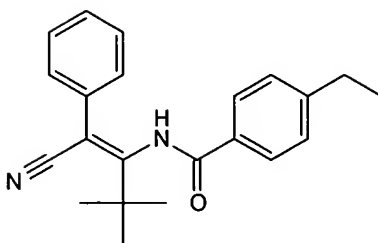
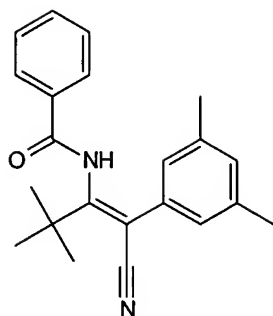




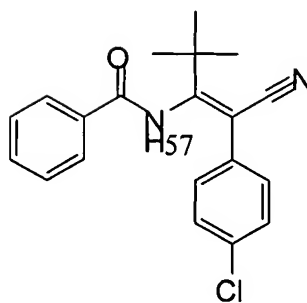








and



Claims 15-28 (Cancelled)